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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 700

MARY DEAN, JOSEPH DEAN, THOMAS DEAN, PATRICIA CATRON, nee DEAN, JOHN DEAN and MARY DEAN, Executrix of the Estate of Joseph Charles Dean, Deceased,
Petitioners,

VERSUS

MARIE KATHERINE JELSMA, nee DEAN,
Respondent.

PETITION FOR REHEARING

RICHARD J. SPOONER,
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Attorney for Petitioners.

March, 1958.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 5-8750

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The petition for rehearing should be granted for the reason that the judgment of the Supreme Court of Oklahoma not only impairs the obligations of contract existing between these parties but also impairs the obligations of contract existing between countless thousands of citizens within the State of Oklahoma and leaves the obligations of contracts heretofore rescinded in a state of uncertainty and elevates the rights of a third-party beneficiary to a parity with those of the actual parties to a contract in an uncertain category of cases 2

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PETITION FOR REHEARING

Mary Dean, Joseph Dean, Thomas Dean, Patricia Catron, nee Dean, John Dean, and Mary Dean, Executrix of the Estate of Joseph Charles Dean, deceased, petitioners herein, respectfully represent to this Honorable Court that on the 3rd day of March, 1958, this Honorable Court made and entered an order denying the Petition for Writ of Certiorari filed herein. Petitioners respectfully pray that a rehearing be granted herein for the reasons hereinafter set out and in support of said petition have attached hereto the certificate of counsel as required by Rule 58 of this Court.

REASONS FOR GRANTING A REHEARING

The petition for rehearing should be granted for the reason that the judgment of the Supreme Court of Oklahoma not only impairs the obligations of contract existing between these parties but also impairs the obligations of contract existing between countless thousands of citizens within the State of Oklahoma and leaves the obligations of contracts heretofore rescinded in a state of uncertainty and elevates the rights of a third-party beneficiary to a parity with those of the actual parties to a contract in an uncertain category of cases.

In this case the respondent daughter sued the Executrix of her father's estate, her stepmother, and his other children for one-half of her father's property. She based her claim upon an ante-nuptial contract between her father and stepmother wherein it was provided that the respondent daughter would receive one-half of her father's property in the event that he should die without other children. The contingency upon which the respondent daughter would have acquired a one-half interest did not happen for the reason that her father thereafter had four additional children.

Petitioners herein, the Executrix, the stepmother, three halfbrothers and one halfsister contested the claim of the respondent for the reason that the contingency upon which it was based did not happen and further for the reason that the said ante-nuptial contract provided that the decedent could by will make provision for such children born after the contemplated marriage. This provision is as follows:

"That if there are any direct blood descendants, heirs of the said husband and wife, inheriting through

both of them jointly, said heirs shall share first as provided for them by law or will made by the said Joseph Charles Dean at any time, and then the property remaining shall be disposed of in accordance with all the provisions and purposes of this contract and the said will; and of the said will and the said contract, the said will shall prevail."

Under the ante-nuptial contract the decedent had the right to make provision for all of his children and dispose of his property by will which he did and in which he left the respondent daughter the sum of Two Thousand Dollars and in which he left his wife an undivided one-third of the residue and in which he left his other children an undivided two-thirds of the residue in equal shares.

Following the marriage the ante-nuptial contract was cancelled by the parties to it which cut off the right of the respondent daughter to claim one-half of his estate even had her father had no additional children.

By bringing this action the respondent daughter sought to avoid the terms of the will by claiming one-half of the property of her father based upon the ante-nuptial contract notwithstanding that the contingent interest had not vested and by asserting that said one-half interest in the property was not subject to probate in his estate despite the very provisions in the ante-nuptial contract authorizing the decedent to dispose of his property by will and despite the subsequent cancellation of the ante-nuptial contract by the parties thereto.

However, the respondent daughter prevailed in both the trial court and the Supreme Court of Oklahoma. In its

decision the Oklahoma Supreme Court held that the statute relating to rescission of a third party beneficiary contract, Title 15, Oklahoma Statutes, Section 29, had no application for the Court held the respondent to be a party to the contract. This case will be relied upon as authority to enforce any contract which has been rescinded without the consent of a third party beneficiary. By this decision a court may hold that a person who is not named as a party and who does not sign a contract, who formerly was considered a third party beneficiary, is now an actual party thereto. By so holding the State Court abandoned the principles of "*stare decisis*", ignored the state statutes, and by arbitrary mandate decided the case. Such action impaired the obligations of contract existing between the parties by virtue of the contract of rescission of the ante-nuptial contract entered into between the parties denominated "Agreement Cancelling Contract" and misconstrued the very terms of the ante-nuptial contract.

This action of the State Court is of significance and of far-reaching effect. Heretofore, it has been the law in this State that the parties to a contract could rescind the same. Likewise, it has been the law that a third party beneficiary could enforce a contract at any time before the parties thereto rescinded the same. Moreover, a person for whose benefit a contract has been expressly made has been held to be a third party beneficiary. *Watson* v. *American Creosote Works*, 184 Okla. 13, 84 P.2d 431. Now, the Oklahoma Court by judicial interpretation has held that a third party beneficiary is a party to a contract and that the same cannot be rescinded without the consent of such third party

beneficiary. Such a decision leaves the law in this State in a condition of chaos. Thousands of contracts which the parties believe to be rescinded are thereby revived and the obligations which existed between the parties prior to this decision are thereby changed. Great doubt now exists as to who is a third party beneficiary. By this decision a third party beneficiary is made a party. An incidental beneficiary now may be held to be a third party beneficiary. In the public interest the principles of "*stare decisis*" should be affirmed, sound precedents re-established, and public confidence in the rights of contract restored. The doubt created by this decision should be removed, third party beneficiary should be clearly defined such that the same cannot by arbitrary mandate be considered an actual party to a contract, and the obligations of contract existing between thousands of parties by virtue of rescission without the consent of third party beneficiaries should be upheld, thus enforcing the provisions of Title 15 Oklahoma Statutes, Section 29 and Section 1, XIV Amendment and Section 10 of Article 1 of the Constitution of the United States.

CONCLUSION

It is respectfully submitted that the matters under consideration herein are of such vital public concern and consequence that the Petition for Rehearing ought to be granted.

Respectfully submitted,

RICHARD J. SPOONER,
2205 First National Building,
Oklahoma City 2, Oklahoma,
Attorney for Petitioners.

March, 1958.

CERTIFICATE OF GOOD FAITH

I, Richard J. Spooner, attorney for Mary Dean, Joseph Dean, Thomas Dean, Patricia Catron, nee Dean, John Dean and Mary Dean, Executrix of the Estate of Joseph Charles Dean, deceased, petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and that the said petition is restricted to other substantial grounds available to petitioners which were not previously presented in the Petition for Writ of Certiorari.

RICHARD J. SPOONER,
2205 First National Building,
Oklahoma City 2, Oklahoma,

Attorney for Mary Dean, Joseph Dean, Thomas Dean, Patricia Catron, nee Dean, John Dean and Mary Dean, Executrix of the Estate of Joseph Charles Dean, Deceased, Petitioners.

March, 1958.